

**BOARD OF APPEALS CASE NO. 5140**

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**BEFORE THE**

**APPLICANT: Frank A. Temple**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to construct an attached garage within the required side yard setback; 900 Yvette Drive, Forest Hill**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

**Aegis: 4/18/01 & 4/25/01**

**HEARING DATE: May 30, 2001**

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**Record: 4/20/01 & 4/27/01**

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## **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Frank A. Temple, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an attached garage within the required 10 foot setback, total of 30 foot side yard setback (proposed 6 foot, total of 19 foot side yard), in the R2, Urban Residential District.

The subject property is located at 900 Yvette Drive, Forest Hill, MD 21050, and is more particularly identified on Tax Map 40, Grid 3D, Parcel 352. The parcel contains .24 acres, is zoned R2, Urban Residential District, and is entirely within the Third Election District.

Mr. Frank Temple appeared before the Hearing Examiner and testified that he proposes to add a 24 foot by 24 foot garage to the right side of his house as you look at his home. The witness testified that his property is very unique in that it has a very steep grade, dropping 4 feet over a span of 20 feet to the left of his property. Mr. Temple stated that the only realistic location for the proposed garage was to the right side of his home and that 24 feet by 24 feet was a minimal size for a usable garage attachment to his home. In describing the grade of the property, Mr. Temple located the slopes in his yard and described why a garage could not be located anywhere else on the property and still have an entrance into the garage. Because of the slope, all run-off from rain and melting snow would go directly into his garage and would prevent any use of the garage without flooding during periods of stormy weather. When asked if a single-car garage would meet his needs, Mr. Temple indicated that a single-car garage would be inadequate for his needs and, once again, because of the side yard setback requirements, would still require a minimum variance, so he did not believe that reducing the size of the proposed garage would have any positive impact on his request and would not eliminate the need for a variance.

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In conclusion, the witness stated that even if he could build a detached structure on his property and eliminate the need for a variance, the garage would be much further back in his yard as a result and would, in fact, be closer to his neighbor's yard and have more of an impact than his proposed garage. The witness prefers to have an attached garage for safety reasons regarding his children and their ingress and egress to and from the home.

Mr. Anthony McClune appeared next as representative of the Department of Planning and Zoning. Mr. McClune, in referring to the Staff Report prepared in this case by the Department and dated May 22, 2001, indicated that the Department had examined the property and agreed with the Applicant that to the left of his property was a severe steeply sloping area that was not conducive to the construction of either an attached or a detached garage. Mr. McClune did confirm that the Applicant could construct a detached garage and it could be much closer to the side yard line than an attached garage, pursuant to Code provisions, but that the impacts associated with a detached garage would be more severe than those associated with the attached proposed garage. The Department of Planning and Zoning concluded that the property was, indeed, unique and that this uniqueness resulted in the requirement that the Applicant obtain a variance from the side yard setback requirements of the Harford County Code in order to construct the proposed garage. Mr. McClune stated that, in his opinion, the proposed attached garage was compatible with other similar garages in this neighborhood and would be in character with other garages in the neighborhood. Mr. McClune also stated that the construction of a detached garage would be out of character compared to other properties in this neighborhood and would, in fact, be somewhat of an eyesore. The Department of Planning and Zoning did not recommend, from a planning perspective, that the Applicant construct a detached garage on his property. Mr. McClune concluded by recommending approval of the requested application and indicated that the conditions requested by the Department of Planning and Zoning would serve to minimize and lessen any impacts associated with the construction and use of the proposed garage.

No persons appeared in opposition to the Applicant's request.

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### **CONCLUSION:**

The Applicant, Frank A. Temple, is requesting a variance, pursuant to Section 267-36B, Table V, of the Harford County Code, to construct an attached garage within the required 10 foot setback, total of 30 foot side yard setback (proposed 6 foot, total of 19 foot side yard), in the R2, Urban Residential District.

The Harford County Code, pursuant to Section 267-36B, Table V, requires a 10 foot, total of 30 foot side yard setback for the Applicant's parcel. The Applicant proposes to construct an attached, two-car garage which will be 24 feet by 24 feet in dimension and will result in a 6 foot, total of 19 foot side yard setback.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest."

The Maryland Court of Appeals has provided guidance in matters of variance requests and has described a two-step analysis in determining whether such requests should be granted. According to the guidance provided by Court, the variance process is a two-step, sequential process:

1. The first step requires a finding that the property whereon structures are to be placed (or uses conducted) is, in and of itself, unique and unusual in a manner different from the nature of surrounding properties, such that the uniqueness or peculiarity of the property causes the zoning provision to impact disproportionately upon the property. If this finding cannot be made, the process stops and the variance must be denied. If, however, the first step results in a supportive finding of uniqueness or unusualness, then the second step in the process is taken.
2. The second step is a demonstration of whether unreasonable hardship (or practical difficulty) results from the disproportionate impact of the ordinance caused by the property's uniqueness exists. Cromwell v. Ward, 102 Md. App. 691 (1995).

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Based on the guidance provided by the Court in Cromwell, and the testimony of both the Applicant and the Department of Planning and Zoning's representative, the Hearing Examiner finds not only that the subject property is topographically unique and unusual in nature, but that this uniqueness results in the requirement that the Applicant request a variance in order to locate this attached garage on his property. To one side of the existing house is a severe slope which prevents the construction of a garage on that side of the house where a variance would not be required. The only reasonable location for an attached garage is to the right of the existing home and that will require the requested variance to locate the garage there. Such garages are commonly found within this neighborhood and, although a detached garage could be constructed, it would be constructed much closer to the property line and much further away from the existing home and, according to the Department of Planning and Zoning, would actually result in more of an adverse impact to neighboring properties than the proposed attached garage.

Based on all the testimony, the Hearing Examiner concludes that the property is unique and that no adverse impacts will result from the construction and use of a two-car attached garage on this property, as described by the Applicant.

The Hearing Examiner recommends approval of the requested variance, subject to the following conditions:

1. The Applicant obtain all necessary permits and inspections for the construction of the garage.
2. The material used to construct the garage shall be compatible with the existing structure.
3. No windows shall be placed on the property line side of the garage.
4. The existing shed located on the property must be relocated outside of the drainage and utility easement.

Date JUNE 21, 2001

William F. Casey  
Zoning Hearing Examiner